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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JEFFREY S. WHITE, JUDGE

UNITED STATES OF AMERICA, )

PLAINTIFF, )

VS. )

NO. CR 10-0245 JSW

KENNETH MARTIN KYLE, )

DEFENDANT. )

SAN FRANCISCO, CALIFORNIA

THURSDAY, APRIL 29, 2010

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

FOR PLAINTIFF: UNITED STATES ATTORNEY  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102  
BY: **OWEN PETER MARTIKAN**  
ASSISTANT UNITED STATES ATTORNEY

FOR DEFENDANT: DAVID M. BIGELEISEN  
ATTORNEY AT LAW  
101 HOWARD STREET  
SUITE 310  
SAN FRANCISCO, CA 94105

REPORTED BY: JAMES YEOMANS, CSR 4039, RPR  
OFFICIAL REPORTER

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

1 THURSDAY, APRIL 29, 2010

2:30 P.M.

2 (THE FOLLOWING PROCEEDINGS WERE HEARD IN OPEN COURT:)

3 **THE CLERK:** CALLING CASE NUMBER CR 10-245, UNITED

4 STATES VERSUS KENNETH MARTIN KYLE.

5 COUNSEL, PLEASE STEP FORWARD AND STATE YOUR

6 APPEARANCES.

7 **MR. MARTIKAN:** GOOD AFTERNOON, YOUR HONOR.

8 OWEN MARTIKAN FOR THE UNITED STATES.

9 **MR. BIGELEISEN:** GOOD AFTERNOON.

10 DAVID MICHAEL BIGELEISEN FOR MR. KYLE, MR. KYLE IS IN  
11 CUSTODY.

12 **THE COURT:** WELCOME, SIR. WELCOME TO ALL COUNSEL.

13 **MR. BIGELEISEN:** MR. KYLE IS PRESENT IN COURT.

14 **THE COURT:** ALL RIGHT. HELLO, MR. KYLE.

15 **THE DEFENDANT:** GOOD DAY, SIR.

16 **THE COURT:** ALL RIGHT. THIS IS THE INITIAL APPEARANCE  
17 IN THIS CASE. WHAT IS THE STATUS OF THE CO-DEFENDANT IN THIS  
18 CASE MS. TESSA VAN --

19 **MR. MARTIKAN:** VLERAH. SHE'S BEING PROSECUTED. SHE'S  
20 IN STATE CUSTODY IN MISSOURI FOR THE FORESEEABLE FUTURE.

21 SHE'S ALSO BEEN CHARGED IN EASTERN DISTRICT OF  
22 MISSOURI WITH SIMILAR, BASICALLY THE SAME OFFENSE. I THINK,  
23 THEY ARE WRITING HER OVER IN THAT CASE.

24 SO IT COULD BE THAT THAT IS THE PROSECUTION AGAINST  
25 HER GOES AHEAD AND NOT IN ONE -- THIS CASE WHICH WE COULD

1 PROBABLY JUST DISMISS HER.

2 I HAVE TO MAKE SURE I'VE GOT THAT COORDINATED, THAT'S  
3 WHAT I ANTICIPATE WILL HAPPEN.

4 **THE COURT:** OBVIOUSLY, THE COURT TAKE AWAY FROM THAT  
5 THIS CASE WILL PROCEED WITH ALL DUE DISPATCH IRRESPECTIVE  
6 WITHOUT WAITING FOR THE CO-DEFENDANT TO BE BROUGHT IN.

7 **MR. MARTIKAN:** EXACTLY.

8 **THE COURT:** SO WITH THAT IN MIND WHAT ARE THE PARTIES  
9 PROPOSING AS FAR AS MOVING THIS CASE FORWARD?

10 **MR. BIGELEISEN:** YOUR HONOR, MR. MARTIKAN AND I MET ON  
11 TUESDAY TO DISCUSS THE PLAN FOR DISCOVERY AND ALSO TO DISCUSS  
12 VERY GENERALLY CONTEMPLATED MOTIONS.

13 MR. MARTIKAN GAVE ME A PACKED OF PAPERS ABOUT THIS  
14 THICK, ABOUT AN INCH AND A HALF THICK AND FOUR CD'S, I ONLY  
15 LOOKED AT THEM VERY BRIEFLY. AND HE AND I BOTH AGREED THERE'S  
16 MORE MATERIAL TO BE HAD, MOST OF IT ELECTRONIC OR COMPUTER  
17 FORM.

18 WE PROPOSED WE RETURN IN THE LATTER PART OF JULY AFTER  
19 WE'VE HAD A CHANCE TO LOOK AT THE DISCOVERY. I'LL NEED TO HAVE  
20 AN EXPERT TAKE A LOOK AT IT.

21 WE WON'T KNOW UNTIL WE GET THERE WHETHER THERE'S MORE  
22 TO BE DUG INTO UNTIL WE START TO LOOK AT THE FIRST MATERIAL,  
23 BUT BY THE MIDDLE OF JULY, I THINK, WE'LL BOTH KNOW WHETHER WE  
24 HAVE EVERYTHING OR WHETHER WE NEED MORE.

25 SO WE BOTH SUGGESTED THAT, IF IT PLEASES THE COURT, WE

1 RETURN SOME TIME AFTER THE 15TH OF JULY TO YOU TO REPORT ON  
2 DISCOVERY AND IF ALL IS GOING AS WE WOULD LIKE IT TO TO SET  
3 MOTIONS DATES.

4 **THE COURT:** ALL RIGHT. YOU AGREE WITH THAT?

5 **MR. MARTIKAN:** I DO, YOUR HONOR.

6 **THE COURT:** ALL RIGHT. SO GIVEN THAT THE COURT WILL  
7 SET THAT TIME, BUT IT IS A RATHER RELAXED SCHEDULE. BUT I WILL  
8 GIVE YOU THE TIME THAT YOU'RE REQUESTING COUNSEL, BUT I WILL  
9 EXPECT SUBSTANTIAL PROGRESS IN THAT TIME.

10 I DON'T WANT -- IF THERE'S GOING TO BE A HANG UP ON  
11 DISCOVERY, I DON'T EXPECT THERE WILL BE, IF THERE WERE, THEN I  
12 WOULD EXPECT YOU TO COMMUNICATE WITH THE COURT, SO THE COURT  
13 CAN RESOLVE THAT, AS OPPOSED TO COMING BACK IN SEVERAL WEEKS  
14 AND TELLING THE COURT WE HAVE A DISCOVERY DISPUTE SO WE NEED  
15 SEVERAL MORE WEEKS OR WHATEVER.

16 I WILL EXPECT SUBSTANTIAL PROGRESS TO BE MADE AND WORK  
17 TO BE DONE ON THE CASE IN THE INTERIM PERIOD.

18 SO, THIS TIME PROPERLY EXCLUDABLE UNDER THE SPEEDY  
19 TRIAL ACT?

20 **MR. BIGELEISEN:** I BELIEVE SO, AS A MATTER OF  
21 PREPARATION.

22 **THE COURT:** EFFECTIVE PREPARATION.

23 **MR. BIGELEISEN:** I WOULD HOPE SO.

24 **THE COURT:** I WOULD FIND THAT, IF YOU WOULD PREPARE AN  
25 APPROPRIATE STIPULATION AND ORDER.

1           **MR. MARTIKAN:** I WILL, AGREED.

2           **THE COURT:** MS. OTTOLINI, OFFICIALLY SET THE DATE?

3           **THE CLERK:** JULY 2ND 2:00 P.M.

4           **THE COURT:** THAT'S FURTHER STATUS AND POSSIBLE SETTING  
5 OF MOTIONS AND/OR TRIAL DATE. SO I ASSUME YOU'LL WORK WITH  
6 GOVERNMENT COUNSEL AND DEFENSE COUNSEL WILL WORK TOGETHER IN  
7 TERMS OF AN APPROPRIATE PROTECTIVE ORDER?

8           **MR. BIGELEISEN:** YES, YOUR HONOR. MR. MARTIKAN  
9 PRESENTED ONE TO ME AND I, OF COURSE, WANT TO DISCUSS IT WITH  
10 MR. KYLE. I'LL BE RESPONDING TO HIM VERY SHORTLY.

11           **THE COURT:** IT'S ONE THAT'S BEEN CAREFULLY NEGOTIATED  
12 BETWEEN THE DEFENSE BAR AND THE GOVERNMENT, I WOULD HOPE THAT  
13 IT WILL BE ACCEPTABLE TO THE DEFENDANT.

14           ALL RIGHT. ANYTHING FURTHER?

15           **MR. MARTIKAN:** NO, YOUR HONOR. THANK YOU.

16           **MR. BIGELEISEN:** THANK YOU VERY MUCH.

17           **THE COURT:** THANK YOU.

18           **THE DEFENDANT:** THANK YOU, SIR.

19

20                           (PROCEEDINGS ADJOURNED.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 23RD DAY OF JULY, 2012.

/S/ JAMES YEOMANS

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JAMES YEOMANS, CSR, RPR